

REMARKS

The foregoing amendments and the following remarks are responsive to the July 11, 2008 Final Office Action, and are submitted in connection with a Request for Continued Examination. Claims 1-3, 6-10, 14-24, and 26-36 were considered and rejected by the Examiner.

Amendment to Claims 1, 10, 22 and 31

Claims 1, 10, 22, and 31 have been amended to clearly recite what was already present and inherent in the claims prior to amendment, namely that "the neck portion" is the same in the preform and the finished pouch. Accordingly, these amendments do not narrow the scope of the claims.

Rejections Under 35 U.S.C. § 103 (a) over Katou and secondary references

Obviousness is a question of law based on underlying factual inquiries set forth in *Graham v. John Deere*: (1) determining the scope and content of the prior art; (2) ascertaining the differences between the claimed invention and the prior art; and (3) resolving the level of ordinary skill in the pertinent art. Objective evidence of non-obviousness must be also considered. In assessing the differences between the claim and the cited references, every feature of the claim must be disclosed or suggested in the cited references or known to one skilled in the art in making a *prima facie* case of obviousness.

In paragraph 3 of the Office action, the Examiner rejected Claims 1, 6-13, 18-22, 26-31, 35 and 36 under 35 U.S.C. § 103(a) as obvious over U.S. Patent No. 6,214,282 to Katou et al. ("Katou") in view of U.S. Patent No. 4,671,763 to Weiler, and further in view of U.S. Patent No. 4,675,070 to Pasternicki and U.S. Patent No. 6,698,160 to Peronek et al. ("Peronek"). Applicants respectfully traverse the Examiner's rejection of these claims.

In paragraph 4 of the Office action, the Examiner rejected Claims 2, 3, 23, and 24 under 35 U.S.C. § 103(a) as obvious over U.S. Patent No. 6,214,282 to Katou et al. ("Katou") in view of U.S. Patent No. 4,671,763 to Weiler, and further in view of U.S. Patent No. 4,675,070 to Pasternicki and U.S. Patent No. 6,698,160 to Peronek et al. ("Peronek"), as applied to Claim 1 and further in view of U.S. Patent No. 3,818,785 to Wakabayshi. Applicants respectfully traverse the Examiner's rejection of these claims.

In paragraph 5 of the Office action, the Examiner rejected Claims 10, 17, and 18 under 35 U.S.C. § 103(a) as obvious over U.S. Patent No. 6,214,282 to Katou et al. ("Katou") in view of U.S. Patent No. 4,671,763 to Weiler, and further in view of U.S. Patent No. 5,049,349 to McCullough. Applicants respectfully traverse the Examiner's rejection of these claims.

Thus, the Examiner has rejected independent Claims 1, 10, 22, and 31 over the primary reference Katou in view Weiler and in view of other secondary references under 35 U.S.C. § 103(a). For the reasons set forth below, Applicants disagree with the Examiner's characterization of Katou and Weiler and believe that both of these primary references fail to teach or suggest elements recited in Claims 1, 10, 22, and 31. Therefore, Applicants believe that the Examiner has failed to state a *prima facie* case of obviousness of these claims.

The Examiner cited Katou as teaching "a process and apparatus for manufacturing a [sealed plastic or foil container] comprising: grasping a neck portion of a preform with a positive transfer/handling system (figures 13B-13f) and maintaining control of the neck portion with the positive transfer system during blow molding (figures 13B-13c) the preform into a pouch, filling the pouch with a product (figure 13d), closing the filled pouch (figure 13e) and releasing the filled and sealed pouch from the system for use by a consumer." Applicants disagree with the Examiner's assessment of this reference.

Katou fails to describe a method or an apparatus which handles the neck portion of the preform throughout the process of manufacturing and filling. Figures 13a-d show the extruded parison being held by the mold at the uppermost portion of the parison. In Figure 13e, the portion of the mold directly below where the parison is being held clamps inward toward the parison to form what appears to be a threaded neck finish. One of skill in the art will recognize that the upper funnel-shaped portion of the parison that remains will be discarded to allow a cap to be placed upon the threaded neck finish. Thus, Katou teaches maintaining control of a part of the parison that is not the same part as the neck finish of the final pouch which is formed. Accordingly, Katou fails to teach or suggest that the control of "the neck portion" is maintained throughout the process of forming as is recited in Claims 1, 10, 22, and 31. Claims 1, 10, 22 and 31 have been amended to recite that the neck finish of the preform is the same as the neck finish of the pouch to clarify this distinction between Katou and the present claims that was already inherent in the claims prior to amendment.

None of the secondary references including Weiler, Peronek, Pasternicki, Wakabayashi, and McCullough account for the above-mentioned deficiencies of the primary reference, Katou, such that they do not, in any combination, disclose or suggest every element of the present claims. Moreover, the examiner's rejections based upon four or more references hint strongly at use of impermissible hindsight to cobble together individual limitations to attempt to create what is presently claimed. Thus, Claims 1, 10, 22, and 31 are patentably distinguishable from the primary references. The remaining pending dependent claims are also patentable for at least the reasons stated above, and also because they each recite other novel and nonobvious features.

No Disclaimers or Disavowals

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, the Applicants are not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. The Applicants reserve the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that the Applicants have made any disclaimers or disavowals of any subject matter supported by the present application.

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Conclusion

Applicants submit that all of the Examiner's rejections have been addressed and overcome, and that all claims are allowable over the art of record. Applicants have submitted amendments and arguments believed to be sufficient to overcome all of the outstanding rejections. Consequently, Applicants have not advanced every argument for the allowability of the claims over the references of record. As such, Applicants do not acquiesce to any of the Examiner's statements or characterizations not specifically traversed. Should the Examiner believe that any outstanding issues are resolvable in an Examiner's Amendment, the Examiner is invited to contact the undersigned.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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